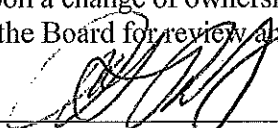


COPY

Town of Amherst
Zoning Board of Appeals
SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit, ZBA FY2015-00033, to formalize an existing second dwelling unit through the creation of a non-owner occupied Converted Dwelling, under Section 3.3241 of the Zoning Bylaw, at 94 Flat Hills Road (Map 9A, Parcel 33, R-O Zoning District), subject to the following conditions:

1. Prior to the issuance of a Certificate of Occupancy:
 - a. All requirements of the Building Code for life safety requirements, including but not limited to fire separation, smoke and carbon monoxide detectors shall be met.
 - b. A "Title 5 Bedroom Count Deed Restriction" limiting the number of bedrooms, inclusive of both units, to no more than three shall be filed with the Registry of Deeds. Proof of said filing shall be submitted to the Planning Department and Health Department.
2. Both units shall be used and maintained in accordance with the floor plans, dated May 22, 2015 and approved on May 28, 2015:
 - a. The total number of bedrooms on the property shall be limited to no more than three unless authorized by the Amherst Board of Health. In the event that additional bedrooms are added, modification of this Special Permit shall be required.
 - b. The lower level of the main house shall not be used as bedrooms unless egress windows are installed, pursuant to condition 2 (a).
3. Parking shall occur substantially in accordance with the Town GIS parking plan, approved on May 28, 2015
 - a. There shall be no more than four cars parked on the property on a regular basis.
 - b. The gravel driveway and parking areas shall be maintained seasonally or more often if needed to prevent significant ruts, vegetation within the gravel areas, or encroachment of the gravel into landscaped areas.
4. There shall be a Resident Manager in place at all times. Upon a change of the listed Resident Manager, updated information shall be submitted to the Planning Department.
5. An approved Management Plan shall be in place at all times for this property. For the current owner, the Management Plan shall be as approved by the Zoning Board of Appeals on May 28, 2015.
6. All exterior lighting shall be designed or arranged to be downcast.
7. Upon a change of ownership of the property, the new owner shall submit a new Management Plan to the Board for review and approval at a public meeting.



Mark Parent, Chair
Amherst Zoning Board of Appeals

6/10/2015
DATE

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant/Owner: Julia Frankel, 1040 South Wooster Street, Apartment #7, Los Angeles CA 90035

Date application filed with the Town Clerk: April 14, 2015

Nature of request: For a Special Permit to formalize an existing second dwelling unit through the creation of a non-owner occupied Converted Dwelling, under Section 3.3241 of the Zoning Bylaw

Address: 94 Flat Hills Road (Map 9A, Parcel 33, R-O Zoning District

Legal notice: Published on May 13, 2015 and May 20, 2015 in the Daily Hampshire Gazette and sent to abutters on May 13, 2015

Board members: Mark Parent, Tom Ehrgood, Keith Langsdale

Staff members: Jeff Bagg, Senior Planner, Rob Morra, Building Commissioner

Submissions:

- Application form filed with the Town Clerk on April 14, 2015
- Cover letter/Project Summary, dated May 21, 2015
- Revised Management Plan
- Lease for Unit A and lease for Unit B
- Town GIS context map
- Revised floor plan, dated May 28, 2015
- Existing condition photograph (from GIS)
- Town GIS Parking Plan, dated May 19, 2015
- Complaint Response Plan
- Resident Manager information
- Letter from abutter, Diane deGroat, 134 Flat Hills Road

Site Visit: May 26, 2015

Mark Parent and Keith Langsdale met the applicant's father, Charles Capers, at the site and observed the location of the property on the west side of Flat Hills Road, setback approximately 100 feet from Flat Hills Road, and the following:

- The interior of the main house which included two bedrooms, a den/playroom, and a room labeled as living room which contained a bed. The lower level included two rooms used for storage (one with a washer/dryer) and a living space to a walkout sliding glass door.

- The interior of the second unit accessed from the driveway by a long hallway. The unit is a studio type, one bedroom apartment including a kitchen, living space, and second floor loft area. The second means of egress is off of the living space and deck. The rear steps of the deck were blocked by stored belongings.
- The exterior of the property and the existing gravel parking area for four vehicles.
- Mr. Langsdale drove north to the abutting property at 134 Flat Hills Road and observed that it is several hundred feet away and not visible from the subject property.

Public Hearing: May 28, 2015

The applicant's representative, Tina Petricca, was present to answer questions. The proposal was summarized as follows:

- The owner, Julia Frankel resided at the property until 2011 when she moved to California and rented both units.
- The main house is currently rented to a family and the second unit is rented to a single person.
- She has family in the area, and has a strong role in managing the property and interest in ensuring that it is occupied by responsible tenants.
- Because the property is far from the bus route it is typically not rented to undergraduate students.
- The total number of occupants would be four people in the two units which is the same as a single family house.

The Board discussed the management arrangements for the property. Ms. Petricca explained that Ms. Frankel's father, Charles Capers is her local management and is listed on the Complaint Response Plan along with her sister, both of whom live in the area.

The Board made the following findings under Section 3.3241:

3.3241(1) - *An existing residence, a structure attached to an existing residence, or a detached structure, may be converted into a dwelling unit or units provided all other zoning requirements which would apply to converted dwellings are met.* The Board found that additions to the house were constructed in 1986 and 1994. Those areas were subsequently converted by the previous owner into the second unit without approvals. The Board finds that the conversion is in a portion of the house that is in an existing structure older than 10 years.

3.3241(2) - *A conversion of a structure shall not exceed the total number of dwelling units allowed on the lot. The total number of dwelling units shall not exceed 4 in the R-N, R-O, and R-LD districts and shall not exceed 6 in the R-VC, R-G, B-G, B-L and B-VC districts. Conversion in the Aquifer Recharge Protection (ARP) or Watershed Protection (WP) overlay districts shall not be permitted.* The proposal includes conversion from a single unit to two units. The lot size is 80,000 square feet where 40,000 square feet is required for two units in the R-O Zoning District.

3.3241(4) - *There shall be no significant change in the exterior of the building, except that the Zoning Board of Appeals may authorize modification or alteration of a building if such modification or alteration does not substantially change the building's character or its effect on the neighborhood or on property in the vicinity. Demolition of the existing structure proposed for conversion shall not be permitted.* The proposal does not require any exterior changes to accommodate the new unit.

3.3241(5) – *Except as hereinafter provided, no converted dwelling use shall involve the demolition and removal of an existing structure proposed for conversion....* The Board found that no demolition is required as part of this proposal.

3.3241(6) - *The proposed conversion shall be suitably located in the neighborhood in which it is proposed, as deemed appropriate by the Special Permit Granting Authority. The conversion, if in a residential district, shall either: a) be located in an area that is close to heavily traveled streets, close to business, commercial and educational districts, or already developed for multi-family use, and shall require owner occupancy or a Resident Manager (see definition) in one of the units; or b) be from one to two units, one of which shall be and shall remain owner-occupied, which shall be made a condition of any Special Permit issued in such an instance.* The proposal involves the formalization of a second unit and therefore conversion from one unit to two units. The property is not owner occupied. The Board found that a Resident Manager has been established and is a requirement of the Special Permit.

3.3241(7) - *The dwelling units shall be connected to the public sewer. However, the Zoning Board of Appeals may authorize, with the approval of the Board of Health, the conversion of a structure to allow an increase from one dwelling unit to two dwelling units on a lot serviced by a septic system.* The property is serviced by a septic system. Based on the available Title 5 records, the septic system is designed for a maximum of three bedrooms. The Board found that with advice from staff that a deed restriction limiting the number of bedrooms to three is a mechanism used by the Health Department and Title 5. The Board noted that at the site visit a room labeled as a living room on the floor plan had a bed in it. A condition of the permit requires the filing of a deed restriction prior to a Certificate of Occupancy.

3.3241(8) - *The Zoning Board of Appeals may modify the dimensional requirements of Table 3, to, one time only for any parcel, allow a conversion under Section 3.3241 that would add one additional unit, only if it finds the modification would be in accordance with the provisions of Section 9.22.* The Board found that no modifications are required for this proposal.

3.3241(10) - *A management plan as defined in the Rules and Regulations adopted by the Zoning Board of Appeals, shall be included as an integral part of any application.* The Board found that the submitted Management Plan was suitable for the property management of this non-owner occupied Converted Dwelling.

3.3241(11) - *A landscape plan appropriate for the project shall be included in the application.* The Board waives the requirement for a formal landscaping plan for this property based on its somewhat secluded location and existing mature vegetation.

Specific Findings:

The Board found under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 & 10.381 - *The proposal is suitably located in the neighborhood in which it is proposed and/or the total Town, as deemed appropriate by the Special Permit Granting Authority; The proposal is compatible with existing Uses and other Uses permitted by right in the same District.* The proposal formalizes a small second dwelling unit in a non-owner occupied Converted Dwelling. No exterior changes are required and the structure maintains the appearance and character of a single family dwelling. Based on the testimony, the property has been used in this way for several years with no known complaints. The Board found that the concerns of the abutter are addressed through the Management Plan, limit on number of cars, and mitigated by the substantial distance between the two properties.

Additionally, the lease and Management Plan limit the number of unrelated tenants to a total of four on the property; the equivalent of that of a rented single family dwelling allowed by-right..

10.382, 10.383 & 10.385 - *The proposal would not constitute a nuisance due to air and water pollution, flood, noise, odor, dust, vibration, lights, or visually offensive structures or site features; The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians; The proposal reasonably protects the adjoining premises against detrimental or offensive uses on the site, including air and water pollution, flood, noise, odor, dust, vibration, lights or visually offensive structures or site features.* The proposal includes the provision of a detailed Management Plan, limit on the number of vehicles, and limit on the number of bedrooms. The second unit small and a Resident Manager a requirement of the Special Permit.

10.386 - *The proposal ensures that it is in conformance with the Parking and Sign regulations (Articles 7 and 8, respectively) of this Bylaw.* The Board finds that two parking spaces per unit are required pursuant to 7.000 and four are provided. The Board found the existing gravel driveway and parking area to be adequate. A condition of the Special Permit requires maintenance of the gravel surface.

10.393 - *The proposal provides protection of adjacent properties by minimizing the intrusion of lighting, including parking lot and exterior lighting, through use of cut-off luminaires, light shields, lowered height of light poles, screening, or similar solutions.* The exterior lights are conditioned to be designed or arranged to be downcast.


10.398- *The proposal is in harmony with the general purpose and intent of this Bylaw, and the goals of the Master Plan.* The proposal formalizes the existing use of the property as a non-owner occupied two unit Converted Dwelling. The permit requires the unit meet applicable Building Code requirements. As a result of the Rental Permit program and this Special Permit, the Town will have an accurate record regarding the use of the property.

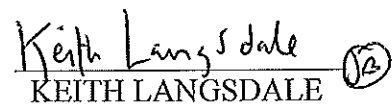
Zoning Board Decision

Mr. Parent MOVED to approve the application with conditions. Mr. Ehrgood seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit, ZBA FY2015-00033, to formalize an existing second dwelling unit through the creation of a non-owner occupied Converted Dwelling, under Section 3.3241 of the Zoning Bylaw, at 94 Flat Hills Road (Map 9A, Parcel 33, R-O Zoning District), subject to the following conditions:


MARK PARENT


TOM EHRCOOD


KEITH LANGSDALE (12)

FILED THIS 7th day of August, 2015 at 10:56 am
in the office of the Amherst Town Clerk Candace J. Y. Burger
TWENTY-DAY APPEAL period expires, August 27, 2015.
NOTICE OF DECISION mailed this 10th day of August, 2015
to the attached list of addresses by Jeffrey R. Bagg, for the Board.
CERTIFICATE OF NO APPEAL issued this day of , 2015.
NOTICE OF PERMIT or Variance filed this day of , 2015,
in the Hampshire County Registry of Deeds.

**BOARD OF APPEALS
AMHERST, MASSACHUSETTS
RECORD OF APPEALS AND DECISION RENDERED**

Petition of Julia Frankel

For a Special Permit to formalize an existing second dwelling unit through the creation of a non-owner occupied Converted Dwelling, under Section 3.3241 of the Zoning Bylaw

On the premises of 94 Flat Hills Road
At or on Map 9A, Parcel 33, R-O Zoning District

NOTICE of hearing as follows mailed (date) May 13, 2015
to attached list of addresses and published in the Daily Hampshire Gazette
dated May 13, 2015 & May 20, 2015

Hearing date and place May 28, 2015 (Town Hall)

LEGAL NOTICE
The Amherst Zoning Board of Appeals will meet on ***Thursday, May 28, 2015***, at 6:30 P.M. in the First Floor Meeting Room, Town Hall, to conduct the following business:
PUBLIC HEARING:
ZBA FY2015-00033 - Julia Frankel - For a Special Permit to formalize an existing second dwelling unit through the creation of a non-owner occupied Converted Dwelling, under Section 3.3241 of the Zoning Bylaw, at 94 Flat Hills Road (Map 9A, Parcel 33, R-O Zoning District)
ZBA FY2015-00037 - Ann Kleiser - For a Special Permit to structurally alter and enlarge a pre-existing non-conforming garage (as to setbacks) and increase its height by changing the from a flat roof to gabled roof, under Section 9.22 of the Zoning Bylaw, at 908 South East Street (Map 20B, Parcel 13, R-O Zoning District)
ZBA FY2015-00038 - Bistro 63 Monkey Bar, LLC - For a Special Permit to operate a Class II restaurant with accessory live and pre-recorded music, under Section 3.352.1 and 5.042 of the Zoning Bylaw, pursuant to the expiration of ZBA FY2014-00033, at 63-67 North Pleasant Street (Map 14A, Parcel 322, B-G Zoning District)
**ERIC BEAL, CHAIR
AMHERST ZONING BOARD OF APPEALS**
May 13, 2015
3325177

SITTING BOARD and VOTE TAKEN:

To grant a Special Permit, ZBA FY2015-00033, to formalize an existing second dwelling unit through the creation of a non-owner occupied Converted Dwelling, under Section 3.3241 of the Zoning Bylaw, at 94 Flat Hills Road (Map 9A, Parcel 33, R-O Zoning District), subject to the following conditions.

Mark Parent - Yes Keith Langsdale - Yes Tom Ehrgood - Yes

DECISION: APPROVED with conditions

THE COMMONWEALTH OF MASSACHUSETTS
AMHERST

City or Town
NOTICE OF SPECIAL PERMIT
Special Permit
(General Laws Chapter 40A)

Notice is hereby given that a Special Permit has been granted

To Julia Frankel
Address 1040 South Wooster Street #7
City or Town Los Angeles, CA 90035

Identify Land Affected: 94 Flat Hills Road
(Map 9A, Parcel 33, R-O Zoning District)

By the **Town of Amherst Zoning Board of Appeals** affecting the rights of the owner
with respect to the use of the premises on

94 Flat Hills Road Amherst
Street City or Town
The record of title standing in the name of
Julia Frankel
Name of Owner
Whose address is 94 Flat Hills Road, Amherst MA 01201
Street City or Town State Zip Code

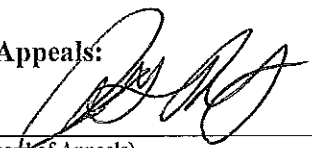
By a deed duly recorded in the
Hampshire County Registry of Deeds: Book 9205 Page 218
or

Hampshire Registry District of the Land Court, Certificate No. _____,
Book _____, Page _____

The decision of said Board is on file, with the papers, in ZBA FY2015-00033. In
the office of the Town Clerk Sandra J. Burgess

Certified this _____ day of _____

Board of Appeals:


(Board of Appeals)

Chairman

(Board of Appeals)

Clerk

_____ at _____ o'clock and _____ minutes _____ m.
Received and entered with the Register of Deeds in the County of Hampshire
Book _____ Page _____

ATTEST _____

Register of Deeds
Notice to be recorded by Land Owner

Town of Amherst Abutter List

<i>Parcel ID</i>	<i>Parcel Address</i>	<i>Owner1</i>	<i>Owner2</i>	<i>Address</i>	<i>City/Zip</i>
9A-30	FLAT HILLS RD	BECKER, CARLA M TRUSTEE OF WINDCATCHER	C/O BECKER, CARLA M TRUSTEE	113 EAST PLUMTREE RD	SUNDERLAND, MA 01375
9A-34	FLAT HILLS RD	LEONARD, WILLIAM J & DEBORAH L		40 FLAT HILLS RD	Amherst, MA 01002
9B-42	53 FLAT HILLS RD	BARRETT, GLEN A & MILDRED		53 FLAT HILLS RD	AMHERST, MA 01002
9B-51	63 FLAT HILLS RD	KENNEDY, TERENCE J & ADELINE S		63 FLAT HILLS RD	AMHERST, MA 01002
9A-37	66 FLAT HILLS RD	HATCH, HEATH R & ZANA R		66 FLAT HILLS RD	Amherst, MA 01002
9B-50	73 FLAT HILLS RD	LOEB, JOHN O & KAREN A		73 FLAT HILLS RD	Amherst, MA 01002
9B-39	83 FLAT HILLS RD	HARVEY, BRYAN & GRIESEMER J. LYNN		83 FLAT HILLS RD	AMHERST, MA 01002
9A-33	94 FLAT HILLS RD	FRANKEL, JULIA C		94 FLAT HILLS RD	AMHERST, MA 01002
6D-25	133 FLAT HILLS RD	JONES, PHILLIPS R & EREDA L		133 FLAT HILLS RD	AMHERST, MA 01002
6D-26	134 FLAT HILLS RD	DEGROAT, DIANE L		134 FLAT HILLS RD	AMHERST, MA 01002
6D-16	143 FLAT HILLS RD	RUBIN, DEBORAH A		143 FLAT HILLS RD	AMHERST, MA 01002
6C-9	HENRY ST	WYSOCKI, JOHN J & CANON, JEAN	C/O TUNDERMANN, SCOTT, & KT GRACE	145 PLEASANT ST	EASTHAMPTON, MA 01002
9B-35	126 SHUTESBURY RD	TINKER, ROBERT F & BARBARA A		126 SHUTESBURY RD	AMHERST, MA 01002